

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BARBARA JEAN MCPHAIL, as Personal
Representative of the Estate of WILLIS RAY
MCPHAIL,

Plaintiff,

Case No.

v.

DEERE & COMPANY,
a Delaware Corporation, and JOHN DOES 1-3,

Defendants.

DEFENDANT DEERE & COMPANY'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441(a), Defendant, Deere & Company ("Deere"), files the following Notice of Removal and would show the Court as follows:

I.

An action was commenced by Plaintiff against Deere & Company in the District Court in and for Kiowa County, Oklahoma. This action was entitled *Barbara Jean McPhail, as Personal Representative of the Estate of Willis Ray McPhail v. Deere & Company, a Delaware Corporation, and John Does 1-3, Defendants*, Case No. CJ 2006-24. The following process, pleadings, and orders have been served or filed in such action, and are attached hereto as Exhibits "1" through "4":

1. Petition.
2. Summons as to Defendant Deere.
3. Plaintiff's Initial Discovery to Deere & Company.
4. Defendant Deere & Company's Notice of Removal of Action to Federal Court.

A certified copy of the docket sheet from that action is attached hereto as Exhibit "5."

II.

This Court has jurisdiction over this case and removal is proper pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441. Plaintiff Barbara Jean McPhail, Personal Representative of the Estate of Willis Ray McPhail, is deemed by law to be a citizen and resident of Oklahoma. Deere is a Delaware corporation with its principal place of business in Illinois. Although the caption of Plaintiff's Petition names "John Does 1-3" as Defendants in this action, no Defendants have been named and served in this lawsuit other than Deere. *See* Exhibit 5. This action involves claims of products liability and wrongful death, made by Barbara Jean McPhail, as Personal Representative of the Estate of Willis Ray McPhail, Deceased. Plaintiff contends Mr. McPhail's death was due to alleged defects in a Model 4440 tractor manufactured and distributed by Deere.

Although Plaintiff's Petition (attached as Exhibit "1") does not specify the amount of Plaintiff's damages, Deere's attorney has contacted Plaintiff's attorney regarding the amount in controversy. While Plaintiff's attorney initially stated that Plaintiff was claiming damages in excess of \$75,000, Plaintiff's attorneys have now indicated they have no authority to "stipulate" to that fact. As the attached correspondence (e-mails and letters) on this issue shows, however, Plaintiff's attorneys have not denied that Plaintiff's damages in this wrongful death case are in excess of \$75,000. *See* correspondence between Plaintiff's attorneys, Chad D. Kirk and Joseph T. Acquaviva, and Deere's attorney, Jo Anne Deaton, attached as Exhibit "6". Accordingly, Deere and its counsel represent to this Court in good faith that the damages claimed by Plaintiff in this lawsuit are in excess of \$75,000, exclusive of costs and interest. Therefore, this is a controversy between citizens of different states, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000, making this case removable under 28 U.S.C. § 1332 and § 1441.

III.

Deere was served with this lawsuit on or about May 15, 2006. Therefore, this Notice of Removal is timely filed within thirty (30) days of the case becoming removable.

IV.

Contemporaneous with the filing of this Notice of Removal, Deere has given the District Court in and for Kiowa County, Oklahoma, written notice of the same in the form attached hereto as Exhibit "4".

V.

The following is a list of counsel of record:

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Counsel for Defendant

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Counsel for Defendant

Respectfully submitted,

/s/ Jo Anne Deaton
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CERTIFICATE OF SERVICE

I certify that on June 1, 2006, I electronically transmitted the attached document to the Clerk of the Court for filing, and mailed a copy of the Notice of Removal to the following: Chad M. Kirk and Joseph T. Acquaviva.

/s/ Jo Anne Deaton _____